

J. GENE EVERETTE

IBLA 82-1294

Decided November 15, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M 54419.

Affirmed.

1. Accounts: Payments -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals -- Payments: Generally

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is \$61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of \$60 within the specified time, but fails to submit the \$1 deficiency within the allowed time.

APPEARANCES: Mrs. J. Gene Everette, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mrs. J. Gene Everette appeals the Montana State Office, Bureau of Land Management (BLM), decision of August 16, 1982, which rejected her simultaneous oil and gas lease application M 54419, drawn with first priority for parcel MT 37 in the January 1982 drawing, because the full amount of rental for the first year of the lease was not submitted within 30 days of notice.

The notice that \$61 was required for the lease was received by appellant on June 28, 1982. Payment of \$60 was received by BLM on July 12, 1982. No specific notice of the deficiency was given to appellant. As the full amount of rental due was not paid within the time allowed, BLM rejected the application pursuant to 43 CFR 3112.4-1.

Appellant states that if she erred in sending only \$60, notice of the deficiency should have been given as there was more than 2 weeks remaining before her 30-day period for compliance expired. As she had received from BLM a receipt No. 354213 indicating payment of \$61, she was confident that she had complied fully with the requirements. She argues that the error of BLM in sending her a receipt for the correct amount, \$61, instead of only \$60 which BLM now asserts it received, should be a correctable item. With her appeal she submitted payments of \$1 and \$61.

The BLM accounts clerk has submitted a statement that on July 12, 1982, she received check No. 216 in the amount of \$137 from appellant for lease applications M 54388 and M 54419. She issued receipts No. 354212 for \$77 for M 54388 and No. 354213 for \$61 for M 54419. The error was discovered later in the day when preparing the daily deposit. At that time, she made a pen and ink correction on receipt No. 354213 to reflect payment of \$60, instead of \$61. She feels confident that each copy of the receipt set showed the change, but concedes that perhaps the receipt copy, the fifth copy of the set, did not receive the impression through the carbons. The action of applying the deficiency in payment to the second application was in accordance with the BLM Manual, section 1372.27C.

The copy of receipt No. 354213 submitted by appellant does not distinctly show that the amount was changed from \$61 to \$60. It thus appears that appellant was not actually aware of the deficiency.

The regulation governing rental payment for simultaneous oil and gas lease applications, 43 CFR 3112.4-1(a), provides pertinently: "The executed lease agreement and the applicant's rental payment shall be filed in the proper BLM office within 30 days from the date of receipt of the notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease." Regulation 43 CFR 3112.6-1(d) provides that the application of the first qualified applicant shall be rejected if an offer is not filed in accordance with 43 CFR 3112.4-1. An offer not accompanied by an adequate rental payment is not filed in accordance with 43 CFR 3112.4-1.

[1] BLM properly rejected appellant's application, as an application for an oil and gas lease under the simultaneous leasing program is properly rejected where payment for the full first year's advance rental is not received in the appropriate BLM office within 30 days after applicant has received a notice of rental due pursuant to 43 CFR 3112.4-1. The requirements of 43 CFR 3112.4-1 are clear and the penalty of rejection set forth in 43 CFR 3112.6-1 is equally explicit. The requirement is strictly enforced by the Department. Elmer J. Parker, 61 IBLA 248 (1982); Paul H. Landis, 61 IBLA 244 (1982); Keith B. Livermore, 59 IBLA 232 (1981); Arthur Ancowitz, 58 IBLA 112 (1981); Robert E. Bergman, 53 IBLA 122 (1981); Earl F. Hartley, 49 IBLA 140 (1980); Edward Goodman, 48 IBLA 152; C. Panos, 42 IBLA 326 (1979); Susan Dawson, 35 IBLA 123 (1978), aff'd, Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980).

Appellant's error cannot be waived in the face of the intervening rights of the second and third drawees. Milton Kroll, 38 IBLA 319 (1978); Donald E. Jordan, 35 IBLA 290 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

